IN THE
SUPREME COURT OF THE
UNITED STATES

October Term, 1978.

No. **78-384**

MICHELLE GEORGE, RONDA ALLEN, GUILLERMINA LOPEZ - MENDEZ, MARY OATES and HORTENSE WILLIAMS, on behalf of themselves and all others similarly situated,

Respondents,

against

HENRY PARRY, Individually and in his capacity as Commissioner of the Orange County Department of Social Services, DAVID RITTER, Individually and in his capacity as Orange County District Attorney, ANNE MOLLOY, BEVERLY CONNELL, MADELINE SMITH and ROBERT REMER,

Petitioners.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JAMES G. SWEENEY,
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The petition of the respondents respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in this action on June 8, 1978.

OPINION BELOW

The opinion at the Court of Appeals was an oral opinion rendered from the bench and is not reported. The opinion of Judge Lloyd F. MacMahon of the United States District Court for the Southern District of New York, dated January 5, 1978, is not reported. A copy of it appears in the appendix hereto.

JURISDICTION

The judgment sought to be reviewed was entered in the Clerk's Office of the United States Court of Appeals for the Second Circuit on June 8, 1978. It is a final judgment. This petition is filed within ninety days of that date. This Court's jurisdiction is envoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Is it constitutionally necessary for a public agency investigating improper payments of welfare funds to accord "Miranda" type warnings to welfare recipients who are being interviewed in a non-custodial type setting, and was it error for the District Court to impose such a duty on the Orange County (New York) Department of Social Services?

STATEMENT OF THE CASE

This action was instituted in the United States District Court for the Southern District of New York, by five individuals who were recipients of Social Service Aid in Orange County, New York.

The complaint sought a declaratory judgment, injunctive relief and damages for alleged violations of the plaintiffs' civil rights under 42 U.S.C. §§ 1983, 1985 and 1986.

Defendants are officers and employees of the Orange County Department of Social Services. The Orange County District Attorney is also a party.

The complaint alleged that the defendants exerted improper pressure on welfare recipients in an effort to recoup payments from recipients who were not entitled to receive them. Plaintiffs further claim that defendants' demands for repayment were accompanied by threats of criminal prosecution, even when no probable cause existed to support criminal prosecution.

Plaintiffs also objected to questioning suspected recipients without benefit of "Miranda" type warnings. Such interrogations, plaintiffs claimed, were designed to coerce the recipients into repaying all unauthorized payments and confessing criminal liability.

The District Court certified the suit as a class action on September 28, 1976. In February, 1977, counsel for both sides began settlement negotiations. Negotiations continued for two months and were concluded at a Pre-Trial Conference in April, 1977. A Stipulation of Settlement was executed by counsel on

April 22, 1977. A copy of that stipulation is included in the appendix hereto. In essence, it imposes a duty upon the Department of Social Services Investigators to give "Miranda" warnings when conducting simple non-custodial interviews.

In August, 1977, before the settlement was confirmed, Orange County moved to be relieved of the Stipulation of Settlement realizing that a manifest injustice would occur and an intolerable burden would be placed on the defendants if an Order enforcing the Stipulation of Settlement were signed by the District Court. The County urged that it was constitutionally unnecessary to give such "Miranda" warnings. The County's motion to be relieved of the Stipulation was denied by the District Court in a Decision dated January 9, 1978, and the plaintiffs' cross-motion for confirmation of the Stipulation of Settlement was approved in the same Decision.

An Order, pursuant to the District Court's Decision, was entered on February 28, 1978. That Order was appealed to the United States Court of Appeals for the Second Circuit. The District Court's Order was affirmed by the Court of Appeals on June 8, 1978.

REASON FOR GRANTING THE WRIT

The County strongly believes that the District Court and the Court of Appeals, by its affirmance, has imposed a duty upon it that is unjust, over burdensome and which most importantly, flies in the face of this Court's ruling in Beckwith v. United States, 425 U.S. 341 (1976). The judicially imposed disposition of the issue below is not in accord with the Beckwith decision and is of such significant importance as to warrant this Court granting certiorari.

The duty imposed on the Fraud Investigation Unit of the Orange County Department of Social Services to give "Miranda" type warnings in non-custodial interviews, is constitutionally excessive. The pivital point of this Courts thinking in the Miranda case[1] was the custodial aspect of the interrogation. A non-custodial interview by a government agency, even if it will ultimately support a criminal prosecution of the person being interviewed, is not a situation which is "inherently coercive" and wanting of "Miranda" protections. This Court's decision in Beckwith is clear on that point. The interviews which are the target of this action were purely non-custodial. Accordingly, the rule of Beckwith should have, but wasn't applied by the District Court and the Court of Appeals. The District Court and Court of Appeals ignored the fact that the reasoning of Beckwith was, in a case very similar to the one at hand, followed by a lower New York Court. See People v. Rosen - Misc. 2d -, 390 N.Y.S. 2d 578 (Sup. Ct. Suffolk Co., 1977).

The fact that the Department of Social Services may have unwittingly stipulated to give such warnings is of no moment. A court should relieve a party of an improvident stipulation to prevent manifest injustice. Geopulos v. Mandes, 35 F. Supp. 276 (District Ct., D.C., 1941). The motion for relief was made before the District Court approved the stipulation and hence the defendants' quest for relief was timely. Hodgson v. Humphries, 454 F. 2nd 1279 (10th Cir., 1972). Such a pre-trial stipulation, not yet blessed by the Court, should not be considered an "inexorable decree". 3 Moore's Federal Practice ¶16.20.

1. Miranda v. Arizona 384 U.S. 436, 86 S. Ct. 1602

Indeed it is reversable error for a Court not to grant such relief to prevent a manifest injustice. Central Distributors, Inc. v. M.E.T., Inc., 403, F. 2d 943 (5th Cir., 1968). When the statements of defendant, Malloy in her affidavit of August 12, 1977, are aligned with this Court's thinking as set forth in the Beckwith case, the results herein are manifestly injust.

We are in a day and age when the public of this nation demand that welfare fraud be stopped. The taxpayers who are the sole foundation of the welfare system will not tolerate the massive abuse to that system by welfare "cheaters. The effect of the decision in this case will go a long way towards shackling the efforts of the Orange County Department of Social Services in tracing out and prosecuting the welfare abuser. The decision herein does so without constitutional, lawful or reasonable basis. The Fraud Unit of the Department of Social Services should not be so shackled and the District Court was erroneous in so doing, as was the Court of Appeals, in affirming the District Court's ruling.

A further comment must be set forth. The defendants' motion was not for a summary dismissal of the plaintiffs' claim of violated civil rights. It was merely a request to try that issue before a fact finder. Even recognizing that some non-custodial interviews might warrant "Miranda" protections, it cannot be said that such is the case in the absence of a showing of a coercive mode of questioning. That issue requires a trial of the factual issues. See Beckwith v. United States, 425 U.S. 34 at 349. Judge MacMahon did not even let the County get that far. This is another indication of

how much the result in this case is opposed to this Court's thinking in Beckwith.

A last observation must be made. There is also a very real question as to the lawful ability of the Department of Social Services to do what the District Court has decreed must be done by it. An agency such as the Department of Social Services cannot by agreement, or otherwise, diminish or relinquish the statutory duty imposed upon it by the New York State Legislature to do all in its power to recoup fraudulent welfare payments. Perez v. Dumpson, 88 Misc. 2d 506, modified and aff'd. 58 AD 2d, 887.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment of the Second Circuit.

Dated: September 5, 1978
Goshen, New York

Respectfully submitted,

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APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

MICHELLE GEORGE, et al,

Plaintiffs,

-against-

HENRY PARRY, et al,

Defendants.

76 Civ.1161
(L.F.M.)

----------x

STIPULATION OF SETTLEMENT

The parties wish to compromise and settle this action without assessing fault on any of the parties hereto, but rather in a joint effort to provide additional constitutional type safeguards to the recipients of assistance from the Orange County Department of Social Services, and they, therefore, stipulate and agree as follows:

I. FUTURE PRACTICES

A. The defendants shall adopt the following practices and procedures regarding the future investigation of persons believed to have received public assistance benefits to which they are not entitled. These procedures will be fully applicable to all cases in which the initial contact with the client by the Fraud Unit of the Orange County Department of Social Services takes place after

the date of the settlement. In addition, they will be applicable to any action taken by the Orange County Department of Social Services, its agents, employees or contractors after the date of the settlement in a case in which there has been prior contact with the client by the Fraud Unit of the Orange County Department of Social Services.

1. In any case in which the person suspected of having received public assistance benefits to which he or she was not entitled is Spanish-surnamed, all notices under this Agreement will be sent or provided in both Spanish and English. In any personal or telephone interview in a case in which the Orange County Department of Social Services knows or has reason to believe from sur-name or prior dealings with the client, that the client's chosen language is Spanish, and the client does not sufficiently understand the English language to fully comprehend the purpose or content of the interview, the Orange County Department of Social Services will insure that a Spanish speaking employee either conducts the interview, or is available to translate, should the client not have his or her own interpreter.

2. When the Orange County Department of Social Services (hereinafter the Agency) believes that a person has received public assistance benefits to which he or she is not entitled, and the Agency wishes to confer with the person to discuss the suspected overpayment, the Agency shall send a letter containing all the elements of the attached

letter, marked Exhibit A, to the person under investigation. The letter shall inform the person : A) of the time and place of the meeting; b) of the nature and amount of the suspected overpayment; c) of the person's right to be represented by an attorney or representative of his or her choice; d) of the availability of community legal services to assist him or her; and e) a true statement of the effect of failing, without good cause, to appear at the interview together with information on whom to contact if the person is unable to appear as scheduled. The information contained in items a) through e) above shall also be contained in every subsequent request to a client to discuss suspected overpayments of public assistance.

3. At no time shall any person so contacted by the Agency be threatened with arrest or jailing. However, the Agency may disclose its intention to refer a case to the District Attorney for appropriate action, including possible prosecution for the violation of criminal laws, if the case cannot be resolved administratively. Nothing herein contained shall prevent the Orange County Department of Social Services from initiating criminal action without prior notice to the client.

4. At no time shall any current public assistance recipient so contacted by the Agency have his or her public assistance reduced or withheld for failure to appear at such interview, nor shall the Agency threaten to reduce or withhold such assist-

ance, exept upon notice to the recipient in accordance with the provisions of 18 NYCRR 358.5 (ten (10) day notice).

5. At the beginning of each interview concerning the possible receipt of public assistance benefits to which a person was not entitled, the Agency employee or contractor conducting the interview shall orally inform the person under suspicion of: a) his or her right to consult an attorney; b) his or her right to have an attorney or other representative present at the interview; c) his or her right to reschedule the interview, without penalty, for a date no more than one week thereafter, in order to arrange for an attorney or other representative to be present, except that a longer adjourment may be granted for good cause; d) that any statement the person signs or makes could be used in an administrative proceeding (Fair Hearing) or prosecution; e) that if English is not his or her chosen language, the client may bring an interpreter, or the Department shall provide one; and f) that if the person does not agree that he or she received public assistance benefits to which he or she was not entitled, or that the amount of benefits alleged to have been wrongfully received is incorrect, he or she may request a Fair Hearing to decide the issue. If an adjournment to obtain an attorney or other representative was requested, and the client appears without such representative or attorney, on the adjourned date, the Agency may proceed

with the interview, unless good cause is shown for the absence of the representative or attorney.

6. As to persons who are suspected of having received public assistance to which he or she was not entitled and who are no longer in receipt of public assistance, and if such person desires to make repayment, the defendants, their agents, employees, and successors may only take written statements from the former recipient admitting to receive(ing) overpayments on a form as annexed hereto and marked Exhibit B, which: a) informs the person of the right to a Fair Hearing to contest either (1) the fact of overpayment, or (2) the amount of overpayment; and b) specifies (1) the amount which the person received but was not entitled to receive, (2) the reason the overpayment was made, and (3) the rate and dates on which voluntary reparyment shall be made. The client shall receive a copy of the Agreement at the time it is executed.

7. As to persons currently receiving public assistance, no written statements will be taken by a representative or employee of the Orange County Department of Social Services after an interview, except those permitted under recoupment or repayment procedures or any statements which the Department is required to take in order to certify or recertify the client for the receipt of public assistance. If an overpayment is found, the Agency shall either reduce or terminate public assistance in

accordance with the requirements of 18 NYCRR Sections 352.7, 352.31 and 358, or such other regulations as the New York State Commissioner of Social Services shall, from time to time, prescribe for recoupment of public assistance benefits wrongfully received and reducing and terminating public grants. Nothing herein contained shall prohibit the Agency from referring the matter to the District Attorney for his action in a proper case.

8. No adverse action will be threatened or taken against an individual as a result of his or her requesting a Fair Hearing or exercising any other right provided for in this Stipulation.

II. PAST PRACTICES

B. As to members of the plaintiff class who have been investigated for fraud by the defendants, their predecessor, by any other members of the Fraud Unit of Orange County Department of Social Services, or by any other employee of the Agency, and who have reimbursed, made arrangements to commence reimbursement, or are currently reimbursing the Department of Social Services for monies allegedly overpaid them, defendants, without admitting any wrongdoing, shall implement the following acts, policies and practices:

1. Plaintiff's counsel and defendants shall jointly review all of the files of this portion of the plaintiff class and the

defendants will send a notice summarizing the terms of the settlement herein to all persons who have, on or after March 10, 1973, been investigated for fraud by the Orange County Department of Social Services, and have not been cleared of such allegations. Such notice shall be sent via first-class mail to the last known address of all such persons, shall apprise them of the settlement, and shall advise such persons to contact the offices of counsel for the plaintiff class if they desire to have their fraud file examined and reviewed by counsel for plaintiff class or an attorney retained by the person. Defendants agree to supply counsel for plaintiffs with a list of all persons so notified.

2. With regard to all persons so notified who request review of their files by counsel for plaintiffs or private counsel, defendants agree to make the entire files of such persons available to counsel and, upon subsequent request of counsel, to schedule a conference with a representative of the Fraud Unit of the Orange County Department of Social Services to make a complete and thorough review of the fraud files of such persons. Such review shall include, but shall not be limited to, a determination of whether any written inculpatory statements obtained by the defendants were obtained from the public assistance recipient involuntarily or as the result of improper Agency actions; a recalculation of the amount of public assistance allegedly overpaid; and a redetermination of whether any amounts overpaid were

due to the Agency error rather than to wilful withholding of information by the recipient. In cases where such a conference demonstrates by a fair preponderance of the credible evidence that an inclupatory statement was involuntarily obtained, or was the product of improper Agency action, the defendants shall destroy such statement, unless the Agency has already referred the matter to the District Attorney of Orange County for his action. In cases where the conference shows by a fair preponderance of the credible evidence that the amount of public assistance allegedly overpaid was actually less than the amount originally computed by the Agency, defendants agree to reduce the amount owing accordingly, and to refund to the recipient any amount recouped or repaid in excess of the amount actually owed. In instances where the conference by a fair preponderance of the credible evidence shows that an overpayment was due to Agency error, rather than to wilful withholding of information or other fraudulent or illegal act by the recipient, and where the recipient has already reimbursed the Agency in full or in part for such overpayment, defendants shall refund the recipient any amount so recouped or repaid because of Agency error. If the information developed at the conference shows that the recipient received more benefits than originally computed by the Department, then the recipient will pay back to the Agency the additional amount as recomputed. At the conclusion of the conference, the Agency shall issue a written decision to the client setting forth

its disposition of the issues raised in the review and its reasons therefor.

3. With regard to all persons whom the Agency attempts to notify of the settlement but whose ntoices are returned to the Agency as undeliverable, the Agency agrees to review on its own the fraud files of such persons to determine if any of the overpayments allegedly made were due in whole or in part to Agency error rather than to wilful withholding of information or other fraudulent or illegal act by the recipient. In instances where Agency error is discovered, defendants agree to make every attempt, including all possible address clearances, to locate the recipients involved and refund any amounts incorrectly repaid or recouped. Defendants agree to supply counsel for plaintiffs with a list of all persons whose notices are returned to the Agency as undeliverable, along with a report on the results of the Agency's subsequent review of such persons' fraud file.

4. In all instances where the member of plaintiff class affected thereby is not satisfied with the results of the conference with defendants' representatives, defendants shall submit the results of such conference to a Fair Hearing, as governed by the Rules and Regulations of the Department of Social Services. Defendants further stipulate that no previously obtained written "confession" shall be in-

troduced as evidence at such Fair Hearing if the voluntariness of such "confession" is shown at such conference to have been by a fair preponderance of the credible evidence not to have been voluntarily given. If the voluntariness of such "confession" has not been so demonstrated, the parties stipulate that the issue of voluntariness may be one of the issues raised at the Fair Hearing, and if raised, shall be the issue first presented to the Hearing Officer for review in order that the recipient may have the benefit of a "Huntley" type hearing regarding voluntariness.

5. With regard to members of the plaintiff class who are Spanish-surnamed, defendants shall send all notices specified in paragraph B(1), supra, in Spanish-language as well as English-language versions.

C. Plaintiffs agree to the dismissal of this action, with prejudice, as against Defendant Ritter, and that he shall in no way be bound by the Consent Order to be entered on this Stipulation.

D. In consideration of the provisions in paragraphs A and B, supra, which shall be incorporated into the Consent Order, plaintiffs hereby agree to voluntarily dismiss the Complaint herein, as against the remaining defendants.

E. Toinform all members of the plaintiff class who may have a financial interest in this settlement of the terms of the settlement, and to insure that all members of the plaintiff class consent thereto, notice

approved by the Court of the proposed settlement shall be sent by the Agency by first-class mail as follows:

1. To all persons not currently receiving public assistance who have, on or after March 10, 1973, been investigated for fraud by the Orange County Department of Social Services and have not been cleared of such allegations, notice shall be sent via the method set forth in paragraph B(1), supra, should the Court order that notice of the proposed settlement is required.

2. To all persons who are presently being investigated and are currently receiving public assistance from the Orange County Department of Social Services, notice shall be sent via first-class mail with their public assistance check of May 20, 1977.

FOR THE PLAINTIFFS:

S/ Laura Zeisel

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FOR THE DEFENDANTS:

s/ Peter G. Striphas

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Dated: April 22, 1977
Goshen, New York

OPINION OF MacMAHON, D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

MICHELLE GEORGE, et al,

Plaintiffs,

-against-

HENRY PARRY, et al,

Defendants.

----------x

76 Civ.1161
(L.F.M.)

OPINION

APPEARANCES:

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MacMAHON, District Judge

Defendants move to be relieved from a stipulation of settlement executed by counsel in this class action. Plaintiffs cross-move for approval of the settlement, pursuant to Rule 23 (e), Fed.R.Civ.P.

This action was instituted by five named plaintiffs, each of whom is a past or present recipient in Orange County, New York, of Aid to Families with Dependent Children or of Home Relief. The amended complaint sought a declaratory judgment, injunctive relief and compensatory and punitive damages for alleged violations of 42 U.S.C. Sec. 1983, 1985 and 1986 by certain officers and employees of the Orange County Department of Social Services (the "Department") and of Orange County.

The gravamen of the amended complaint was that defendants were exerting improper pressure on welfare recipients in an effort to recoup allegedly unauthorized aid payments. Plaintiffs claimed that defendants' demands for repayment were accompanied by implicit and explicit threats of criminal prosecution, even when defendants lacked probable cause to believe that the recipient had committed a crime. They also claimed that defendants, without Miranda-type warnings, subjected suspected recipients to "interrogations" designed to coerce them into confessing criminal liability and promising to repay all unauthorized payments. The total effect of these tactics, plaintiffs alleged, was to coerce unfounded admissions of criminal

liability from welfare recipients, to force repayment of money from recipients immune from civil judgment, and to instill fear of imminent arrest for welfare fraud.

We certified the suit as a class action on September 28, 1976. In February 1977, after a pretrial conference with Magistrate Sol Schreiber, counsel began settlement negotiations. The negotiations continued for some two months and were marked by repeated disagreements. The disagreements were apparently resolved at a pretrial conference before Magistrate Schreiber on April 14, 1977, and a stipulation of settlement was executed by counsel on April 22. We subsequently approved a notice of settlement, which was printed in both English and Spanish and mailed to the class members.

Defendants now object to the stipulation, arguing that it imposes obligations on them contrary to those imposed by "prevalent case law in the State of New York." [1] They admit that they were aware of the nature of the stipulation throughout the negotiations but allege that their counsel failed fully to explain its provisions. They further allege that they agreed to the stipulation's execution only because they did not "fully comprehend ... .. all of (its) ramifications. . . ."

These allegations are insufficient to support defendants' requested relief. The settlement stipulation is an executory accord, Hall v. People to People Health Foundation, Inc., 493 F. 2d 311 (2d Cir.

1974), and, if valid, is binding on the parties until our Rule 23(e) decision. See Tate v. Werner, 68 F.R.D. 513 (E.D. Pa. 1975). Defendants do not allege that the stipulation was obtained by fraud, duress or other illegal means, see First Nat'l Bank of Cincinnati v. Pepper, 454 F. 2d 626 (2d Cir. 1972), or that their counsel was not authorized to settle. Cf. Gilbert v. United States, 479 F.2d 1267 (2d Cir. 1973); Thomsen v. Terrace Nav. Corp., 490 F. 2d 88 (2d Cir. 1974); Autera v. Robinson, 419 F. 2d 1197 (D.C. Cir. 1969). Rather, their only argument is that their failure to comprehend the "ramifications" of the stipulation precluded their effective consent to it.

Defendants, however, had ample time to study the proposed stipulation before its execution. The cannot rely, therefore, on their alleged failure to comprehend the significance of the disclosed facts to avoid the settlement, General Discount Corp. v. Schram, 47 F. Supp. 845 (E.D.Mich. 1942); Daly v. Busk Tunnel Ry., 129 F. 513 (8th Cir. 1904). See Robinson v. E.P. Dutton & Co., 45 F.R.D. 360 (S.D.N.Y. 1968). Moreover, inasmuch as that failure allegedly resulted from their counsel's omissions, defendants are precluded from relief. Hall v. People Health Foundation, Inc., supra; Davis v. United Fruit Co., 402 F. 2d 328 (2d Cir. 1968), cert. denied, 393 U.S. 1085 (1969).

Accordingly, we hold that defendants are bound by their voluntarily

executed settlement agreement, and turn to plaintiffs' motion for approval of the settlement, pursuant to Rule 23(e).

In considering a settlement under Rule 23(e), we act "'as a fiduciary who must serve as a guardian of the rights of absent class members.'" City of Detroit v. Grinnell Corp., 560 F. 2d 1093 (2d Cir. 1977). Consequently, before approving the settlement, we must be convinced that (1) it was not collusive but was made after negotiations at arms' length; (2) counsel are experienced in similar cases; (3) sufficient discovery has occurred to enable counsel to act intelligently; and (4) the number of objectants is small. [2] Feder v. Harrington, 58 F.R.D. 171 (S.D.N.Y.) 1972)

The stipulation here is not a collusive agreement. Each side repeatedly challenged the other's proposals in the preceding negotiations, indicating conclusively that hard bargaining and adversary interests, rather than collusion, permeated the negotiations.

Nor is there any doubt as to the qualifications of counsel. Their integrity, expertise and professional skill are adequate. Moreover, there is not the slightest hint that counsel for either side would shy away from a trial if one were in the interests of his or her clients.

We are also convinced that sufficient discovery had been conducted to enable counsel to act intelligently in the settlement negotiations. Extensive interrogatories

had been returned, numerous documents had been inspected, and the deposition of Anne Molloy, a defendant with critical knowledge of the workings of the Department, had been taken. The quality and quantity of the discovery conducted is sufficient to have enabled counsel to have made an informed decision as to the merits and terms of the settlement.

Finally, to ensure that the interests of the class have not been jeopardized by the settlement, we must weigh the benefits accruing to them from the agreement against the benefits they could expect to receive from continued litigation. See City of Detroit v. Grinnell Corp., 495 F 2d 448 (2d Cir. 1974); Feder v. Harrington, supra. Plaintiffs have obtained in the settlement essentially all of the procedural safeguards and policy changes they initially sought. Although they have recovered no damages through the settlement, such recovery might have been uncertain after a trial. See, e.g., Smith v. Sampson, 349 F. Supp 268 (D.N.H. 1972), and Knuckles v. Prasse, 435 F. 2d 1255 (3d Cir. 1970), cert. denied, 403 U.S. 936, reh. denied, 404 U.S. 877 (1971). Clearly, the settlement's failure to provide recovery of damages does not, in itself, prevent our approval. See, e.g., Hill v. Art Rice Realty Co., 66 F.R.D. 449 (N.D. Ala. 1974); Sunrise Toyota, Ltd. v. Toyota Motor Co., 1973-1 Trade Cases Sec. 74,398 at 93,821 (S.D.N.Y. 1973).

We threfore conclude that the class has received benefits from this settlement

at least commensurate with any it reasonably could have expected from a full trial. Certainly, the settlement as a whole is not so unfair on its face as to preclude judicial approval. Glicken v. Bradford, 35 F.R.D. 144 (S.D.N.Y. 1964).

Accordingly, defendants' motion for relief from the stipulation is denied. Plaintiffs' corssmotion for approval of the settlement is granted.

Settle an order within twenty (20) days.

Dated: New York, N.Y.
January 5, 1978

s/ Lloyd F. MacMahon
LLOYD F. MacMAHON
United States District Judge

JUDGMENT OF COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
----------x

MICHELLE GEORGE, et al, 78-7145
Plaintiffs,
-against-

HENRY PARRY, et al,
Defendants.
----------x

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the eighth day of June, one thousand nine hundred and seventy-eight.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the Judgment of said District Court be and it hereby is affirmed in accordance with the Court's oral opinion in open court with costs to be taxed against the appellants.

A. DANIEL FUSARO,
Clerk

By ARTHUR HELLER,
Deputy Clerk